



Toxics Cleanup Program Policy

Policy 540A

Resource Contact: Policy and Technical Support Staff *Effective:* April 8, 1992

References: Ch. 173-340 WAC *Revised:* June 25, 2004

Policy 540A Enforcement

This policy applies whenever the department intends to issue Model Toxics Control Act orders requiring a Potentially Liable Person (PLP) to provide remedial action or pay for cleanup costs or natural resource damage assessments. This policy is intended to supplement requirements specified in statute and rule. Regional Directors should be kept informed about enforcement actions against local governments.

1. Emergency Orders May Be Issue At Any Time During The Cleanup Process

In general, emergency orders should be used only in situations when the normal process of issuing an enforcement order would be longer than the deadline necessary for initiating remedial action.

2. The Toxics Cleanup Program Generally Attempts To Negotiate Or Have Discussions With PLPs Prior to Issuing Orders.

Prior to issuing orders, TCP staff is encouraged to attempt negotiations for a consent decree or discussions for an agreed order with PLPs, whenever possible. However, there are cases where potential delays in the cleanup process make negotiations impracticable or not in the public interest; for example, emergency conditions, the time required for negotiations or discussions would be longer than the deadline necessary for initiating remedial action, PLP unresponsiveness, or a PLP request for an enforcement order.

Attempts to negotiate a consent decree or discuss an agreed order should be documented in the site file.

3. The Site Manager May Withdraw From Negotiations Or Discussions.

The site manager may withdraw from negotiations for a consent decree or discussions for an agreed order if it is determined that:

- A. Reasonable progress is not being made toward the consent decree or order acceptable to the department, see WAC173-340-520(1)(1), WAC 173-340-520(2)(e), and WAC 173-340-530(6); or
- B. The consent decree or order is no longer appropriate based on new information or changed circumstances.

Decisions to withdraw should be made in consultation with the assigned Assistant Attorney General.

The site manager may begin enforcement action after notifying the PLP in writing, of its intent to withdraw from the negotiations or discussions. See WAC 173-340-520(1)(1), WAC 173-340-520(2)(e), and WAC 173-340-530(6).

4. Generally, TCP Issues Orders Requiring PLPs To Conduct Remedial Actions Before Using Funds From The Toxics Account.

When attempts at negotiations or discussions are unsuccessful, TCP site managers generally will issue an order before proceeding with cleanup work utilizing state toxics control account monies. Toxics account funds may be used prior to issuing orders if emergency conditions exist at the site.

5. Site Managers Shall Use The Boilerplates As A Basis For Drafting Orders.

The Boilerplates for Agreed Orders and Enforcement Orders can be found on the Toxics Cleanup Program's intranet site. Use of the documents shall be in accordance with the provisions of WAC 173-340-130 and Part V of Chapter 173-340 WAC. Significant deviations from these boilerplates should be discussed with the assigned Assistant Attorney General.

6. Generally, TCP Will Not Take Enforcement Actions Against Residential Landowners.

Although residential landowners are PLPs, in the exercise of its enforcement discretion, TCP generally will not pursue enforcement actions toward residential landowners to require such an owner to take response actions or pay response costs unless:

- A. The residential homeowner's activities lead to a release or threatened release of hazardous substances which results in the need for remedial actions at the site;
- B. The property owner fails to comply with any MTCA obligations (e.g., reporting the release of a hazardous substance);
- C. The property owner fails to provide access to the site or information, or fails to cooperate with TCP's investigation or cleanup at the site;
- D. The property owner develops or improves the property in a manner inconsistent with residential use, or the development of the property leads to a release or threatened release of hazardous substances; or
- E. The property owner fails to comply with any institutional controls established at the site.

7. Effect Of Policy

This policy does not affect any other obligations required of owners of contaminated property under the MTCA or other federal, state and local laws. It provides guidance for the exercise of Ecology's enforcement discretion. It is intended only for Ecology's internal use and may not be relied upon by any person to create a right or a benefit, substantive or procedural, enforceable at law or in equity. The policy is not a covenant not to sue any person and does not affect or negate the liability or defenses any person may have under the MTCA or other law. Ecology may withdraw or change this policy at any time. Ecology may act at variance with this policy.

Approved:

A handwritten signature in dark ink, appearing to read "James J. Pendowski", written over a horizontal line.

James J. Pendowski, Program Manager
Toxics Cleanup Program

